

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION No. 5647 OF 2006

Bhaurao Kisan Salam & ors.

V.

Bhujangrao Krushnaji Salam & ors.

Office Notes, Office Memoranda of Coram
 appearances, Court's orders or directions
 and Registrar's orders

Court's or Judge's orders

Mr.S.H. Quazi Advocate for the petitioners.
 Mr.Joshi Advocate holding for Mr.Mardikar for
 Re.1.
 Mr.J.B.Jaiswal, A.G.P., for Res. 2 to 4.

CORAM: A.B. CHAUDHARI, J.
DATED : 26th JULY, 2007.

Heard learned counsel for
 respective parties.

2. Mr.Qazi, learned counsel,
 vehemently argued that the petitioners are
 admittedly landlords in respect of the suit field
 property and they were put in possession by
 Elgar Samiti. He submits that the petitioners
 were in actual possession of the suit field and
 the appellate court was not justified in
 disturbing their possession. He therefore
 prayed that petitioners' possession should be
 protected by this Court by setting at naught

the order passed by the appellate Court.

3. Mr.Joshi, learned counsel for respondent no.1, opposing the submissions made by Mr.Qazi, submitted that respondent no.1 is tenant right from 1962 over the suit field and had produced the records before the Courts below to prove his case and the appellate court found a prima facie case in his favour. In view of this, he submits that respondent no.1 has legal right to be in possession of the suit field and he is in possession of the suit field and his possession cannot be disturbed.

4. Having heard the learned counsel for the respective parties and having gone through the impugned order passed by the appellate court, I find that the appellate court has adhered to the three requirements for grant of temporary injunction. The appellate court has found that prima facie case is made out by respondent no.1 because he is tenant under the the Bombay Tenancy and

Agricultural Lands (Vidarbha Region) Act and has been in possession since 1962. It is seen that even if the petitioners were put in possession by the Elgar Samiti that would be of no consequence. In view of the prima facie case, the appellate Court issued injunction against respondent no.1 and during the pendency of the matter allowed him to continue to be in possession. I do not find that there is any error in the finding recorded by the appellate court. On the contrary, I find that prima facie case being in favour of respondent no.1, the appellate court has rightly exercised appellate power. There is no substance in the petition. Writ petition dismissed. No costs.

JUDGE

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